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NETFLIX, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

LOUIS GUERRA, JR.,

Case No. C-07-3343 MJJ

Plaintiff,

DEFENDANT NETFLIX, INC.'S ANSWER TO COMPLAINT

NETFLIX

Complaint filed: June 26, 2007

Defendant:

No Trial Date Set

— 1 —

Defendant NETFLIX, INC. ("Defendant") answers Plaintiff LOUIS GUERRA, JR.'S ("Plaintiff") form Employment Discrimination Complaint, filed June 26, 2007, as follows:

1. Defendant admits based on information and belief the allegations in paragraph 1 of the Complaint.

2. Defendant admits that one of its facilities is located at 545 Oakmead Parkway, Sunnyvale, California.

3. To the extent Paragraph 3 consists of legal conclusions, no response is required. Defendant agrees that jurisdiction in federal court in the Northern District of California is proper pursuant to 28 U.S.C. § 1331 (federal question jurisdiction). However, Defendant objects to improper venue on the basis that this case is not properly assigned to the San Francisco branch of this Court. Pursuant to Northern District of California Local Rule 3-2(c), all civil actions which

1 arise in the counties of Santa Clara, Santa Cruz, San Benito or Monterey shall be assigned to the
 2 San Jose Division, unless excepted; such exception is inapplicable to this case. By responding to
 3 the Complaint, Defendant does not in any way waive its objection based on improper venue or
 4 intradistrict assignment, nor does Defendant in any way waive its right to move for transfer this
 5 matter to the San Jose Division of this Court.

6 4. Defendant denies each and every allegation in Paragraph 4 of the Complaint.

7 5. Defendant denies each and every allegation in Paragraph 5 of the Complaint.

8 6. Defendant denies each and every allegation in Paragraph 6 of the Complaint.

9 7. Defendant denies each and every allegation in Paragraph 7 of the Complaint.

10 8. In response to the allegations in Paragraph 8 of the Complaint, Defendant admits,
 11 on the basis of information and belief, that on or about March 22, 2007, Plaintiff filed an
 12 administrative charge with the United States Equal Employment Opportunity Commission
 13 (“EEOC”) and the California Department of Fair Employment and Housing. However,
 14 Defendant denies that Plaintiff alleged discrimination on the basis of race or color or appearance
 15 in the charge. Defendant denies each and every remaining allegation contained in Paragraph 8 of
 16 the Complaint that is not expressly admitted herein.

17 9. In response to the factual allegations in Paragraph 9 of the Complaint, Defendant
 18 admits, based on information and belief, that the EEOC issued Plaintiff a Notice-of-Right-to-Sue
 19 letter. However, Defendant lacks information sufficient to form a belief as to the allegation that
 20 Plaintiff received the Notice-of-Right-to-Sue letter on or about March 30, 2007, as alleged, and
 21 on that basis, Defendant denies the same. Defendant denies that a copy of the Notice-of-Right-to-
 22 Sue letter was attached to the Complaint. Defendant denies each and every remaining allegation
 23 contained in Paragraph 9 of the Complaint that is not expressly admitted herein.

24 10. Paragraph 10 of the Complaint consists of Plaintiff's demand for a jury.
 25 Therefore, no response is required.

26 11. Paragraph 11 of the Complaint consists of Plaintiff's prayer for relief. Defendant
 27 denies Plaintiff is entitled to any of the relief prayed for in the Complaint.

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AFFIRMATIVE DEFENSES

By way of affirmative defense to the allegations of the Complaint herein, Defendant alleges as follows:

FIRST AFFIRMATIVE DEFENSE

As a first affirmative defense to each and every claim, the Complaint fails to state a claim against Defendant upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

As a second affirmative defense to each and every claim, in the event that Defendant is found to be a proper defendant employer within the meaning of Title VII of the Civil Rights Act of 1964 (“Title VII”), Plaintiff’s claims are barred as to Defendant Netflix because Defendant was not Plaintiff’s employer and did not employ Plaintiff.

THIRD AFFIRMATIVE DEFENSE

As a third affirmative defense to each and every claim, in the event that Defendant is found to be a proper defendant employer within the meaning of Title VII, Plaintiff's claims are barred because all alleged acts and/or omissions committed by Defendant were a just and proper exercise of management discretion and based on legitimate, nondiscriminatory reasons.

FOURTH AFFIRMATIVE DEFENSE

As a fourth affirmative defense to each and every claim, in the event that Defendant is found to be a proper defendant employer within the meaning of Title VII, the Court has no jurisdiction over all, or part(s) of, the subjects of the claims alleged in the Complaint because Plaintiff failed to exhaust his mandatory administrative remedies pursuant to the processes set forth by the Equal Employment Opportunity Commission under Title VII of the Civil Rights Act, 42 U.S.C. §§ 2000e, *et seq.*

FIFTH AFFIRMATIVE DEFENSE

As a fifth affirmative defense to each and every claim, in the event that Defendant is found to be a proper defendant employer within the meaning of Title VII, Defendant is informed and believe and therefore alleges that Plaintiff is barred from recovering any damages, or any recovery of damages must be reduced, by virtue of Plaintiff's failure to exercise reasonable

1 diligence to mitigate the alleged damages.

2 **SIXTH AFFIRMATIVE DEFENSE**

3 As a sixth affirmative defense to each and every claim, in the event that Defendant is
 4 found to be a proper defendant employer within the meaning of Title VII, Defendant has, and
 5 continues to follow and enforce, a policy prohibiting and seeking to prevent discrimination and
 6 retaliation in the workplace. Company policy includes encouraging employees to come forward
 7 with complaints of discrimination. Known violators of this policy, including supervisory
 8 personnel, subject themselves to remedial and disciplinary measures, including termination.
 9 Consequently, Plaintiff's refusal and failure to use these internal mechanisms prior to bringing the
 10 present lawsuit bar his claim(s) under the affirmative defense articulated in Burlington Industries
 11 v. Ellerth, 118 S. Ct. 2257, 2270 (1998), and Faragher v. Boca Raton, 118 S. Ct. 2275, 2292-93
 12 (1998).

13 **WHEREFORE**, Defendant prays for judgment as follows:

14 That Plaintiff takes nothing by the Complaint;

15 That the Complaint be dismissed in its entirety with prejudice;

16 That Plaintiff be denied each and every demand and prayer for relief contained in the
 17 Complaint;

18 For costs of suit incurred herein, including reasonable attorneys' fees; and

19 For such other and further relief as the Court deems just and equitable.

20 Dated: 8-17, 2007

Respectfully Submitted,

21 JACKSON LEWIS LLP

22 By: Bradley W. Kampas
 23 Bradley W. Kampas
 Cara Ching-Senaha
 24 Attorneys for Defendant
 25 NETFLIX, INC.

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